1
2
3
4
5

UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

6 | ANTHONY BROOKS, | Case No. 3:20-cv-00135-MMD-CLB

7 | Plaintiff, | ORDER

8 | v.

ALZATE, *et al.*,

9
10 | Defendants.

11

12 | **I.   DISCUSSION**

13 | Plaintiff Anthony Brooks is a prisoner proceeding *pro se.* On February 27, 2020,

14 | Plaintiff initiated this case by submitting a notice of complaint. (ECF No. 1-1.) Plaintiff

15 | eventually submitted three civil rights complaints pursuant to 42 U.S.C. § 1983 and an

16 | application to proceed *in forma pauperis.* (ECF Nos. 4, 5, 8, 10.)

17 | Pursuant to 28 U.S.C. § 1915(g), "if [a] prisoner has, on 3 or more prior occasions,

18 | while incarcerated or detained in any facility, brought an action or appeal in a court of the

19 | United States that was dismissed on the grounds that it is frivolous, malicious, or fails to

20 | state a claim upon which relief may be granted," he may not proceed *in forma pauperis*

21 | and, instead, must pay the full $400.00 filing fee in advance unless he is "under imminent

22 | danger of serious physical injury." 28 U.S.C. § 1915(g).

23 | On at least three prior occasions, the Court has dismissed civil actions commenced

24 | by Plaintiff while in detention for failure to state a claim upon which any relief may be

25 | granted.[1] Although these dismissals do not use the term dismissed for failure to state a

26

27 | [1]*See Brooks v. Washoe County Public Defender*, 3:19-cv-00504-MMD-WGC
(dismissed on January 27, 2020 for failure to state a claim); *Brooks v. Valentine*, 3:19-
28 | 00696-MMD-WGC (dismissed on January 27, 2020 for failure to state a claim); *Brooks v. Bryant*, 3:19-cv-00457-APG-CLB (dismissed on February 24, 2020 for failure to state a claim); *Brooks v. Nevada Department of Corrections*, 3:19-cv-00623-MMD-WGC

1 claim, the Court looks to the substance of the dismissal over the form of the dismissal to

2 determine whether the prior actions "rang the PLRA bells of . . . failure to state a claim."

3 *Harris v. Mangum*, 863 F.3d 1133, 1142 (9th Cir. 2017) (holding that "when we review a

4 dismissal to determine whether it counts as a strike, the style of the dismissal or the

5 procedural posture is immaterial. Instead, the central question is whether the dismissal

6 'rang the PLRA bells of frivolous, malicious, or failure to state a claim.'") The Court finds

7 that these four cases were in substance dismissed for failure to state a claim and that

8 Plaintiff has at least three strikes under the PLRA.

9   In his complaints, Plaintiff sues prison officials for failing to deliver his packages to

10 him on November 18, 2019, and January 2, 2020. (ECF Nos. 4, 5, 8.) The Court finds

11 that these allegations fail to plausibly allege that Plaintiff was in imminent danger of

12 serious physical injury at the time of filing. *See Andrews v. Cervantes*, 493 F.3d 1047,

13 1055-56 (9th Cir. 2007) (holding that the exception to § 1915(g) applies if the complaint

14 makes a plausible allegation that the prisoner faced an ongoing danger of serious

15 physical injury at the time of filing). As such, Plaintiff must pre-pay the $400.00 filing fee

16 in full.

17 **II.   CONCLUSION**

18   It is therefore ordered that Plaintiff's application to proceed *in forma pauperis* (ECF

19 No. 10) is denied.

20   It is further ordered that this action will be dismissed without prejudice unless

21 Plaintiff pays the $400.00 filing fee in full within 30 days from the date of entry of this

22 Order.

23   It is further ordered that the Clerk of the Court will send Plaintiff two copies of this

24 Order. Plaintiff will make the necessary arrangements to have one copy of this Order

25 attached to the check paying the filing fee.

26 ///

27

28 (dismissed on May 29, 2020 for failure to state a claim). The Court takes judicial notice of
its prior records in the above matters.

1   It is further ordered that the Clerk of the Court will retain the complaints (ECF Nos.

2 4, 5, 8) but will not file them at this time.

3   DATED THIS 3rd Day of February 2021.

4

5   MIRANDA M. DU
        CHIEF UNITED STATES DISTRICT JUDGE

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28

3